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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/665,668

09/20/2000

Larry B. Gray

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5527

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EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

12/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/665,668	Applicant(s) GRAY ET AL.	
	Examiner Vy Q. Bui	Art Unit 3773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/s/ Vy Q. Bui/
 Primary Examiner, Art Unit 3773

Continuation of 11. does NOT place the application in condition for allowance because: the Applicant (Remarks/Arguments, page 3, paper 11/23/2009) argued that Kleshinski-5,746,765 (F 2-5 and 13) does not disclose "a wave" as in claim 21 or "wave-shaped struts" as in claim 22. To the contrary, the "Board of Appeal" (Decision on Appeal, paper 1/19/2007) has found that F 2-5 of Simon-5,354,308, which are the same as F 2-5 of Kleshinski-5,746,765 (Simon-5,354,308 is a parent case of Kleshinski-'765), disclose a stent including "wave-shaped" struts (paper 1/19/2007; page 7: lines 1-20, and page 8: last paragraph) and a greater frequency at the end of the stent shown in F 4 of Simon-5,354,308 (or F 4 of Kleshinski-'765).

The Applicant (Remarks/Arguments, page 3, paper 11/23/2009) also argued that Kleshinski-'765 does not disclose "serpentine" shape. However, the "Board of Appeal" (Decision on Appeal, paper 1/19/2007) has found that the stent of the current invention includes a wave shape or serpentine shape including curved sections and straight sections (the "Board of Appeal": Decision on Appeal, paper 1/19/2007, page 5, lines 13-16). As indicated in the "Final Office Action" (9/30/2009), the stent of Kleshinski-'765 (F 2-5 and 13) does include curved sections (bent around circular pin 50, see F 13 of Kleshinski-'765) and straight sections between curved section bent around pin 50, therefore, Kleshinski-'765 stent also includes wave-shaped struts or serpentine-shaped strut.

As to the rejection 103(a), Klein-5,593,442 clearly teaches a stent including a wire bent in a "serpentine" shape. The serpentine shape as taught by Klein-'442 defines a general zig-zag shape with straight portions. In view of Klein-'442, it would have been obvious to one of ordinary skill in the art to recognize that the struts of Kleshinski-'765 are also recognized as "serpentine-shaped".